

E-filed 12/16/05

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

XIOA FENG SHEN, et al.,

Defendants.

Case No. CR05-00715 JF (HRL)

ORDER CONTINUING MOTIONS TO
TAKE VIDEO DEPOSITIONS OF
MATERIAL WITNESSES

[Re: Miscellaneous Case Nos.:

CR05-90495 Misc. HRL
CR05-90499 Misc. HRL
CR05-90500 Misc. HRL
CR05-90501 Misc. HRL
CR05-90502 Misc. HRL
CR05-90503 Misc. HRL
CR05-90504 Misc. HRL
CR05-90505 Misc. HRL
CR05-90506 Misc. HRL
CR05-90507 Misc. HRL
CR05-90512 Misc. PVT
CR05-90513 Misc. PVT]

On December 14, 2005, material witness Yu Ying Lin's Motion to Take Deposition by Videotape pursuant to Fed. R. Crim. P. 15(a) and 18 U.S.C § 3144 came on for hearing. Yu Ying Lin appeared through counsel, along with several other attorneys representing material witnesses in this case. Also present were counsel for four of the five defendants. Only one of the defendants, Ming Sun, was present in the courtroom. The four other defendants had not been transported to the court. The government was also present.

Yu Ying Lin filed her motion on December 8, 2005 accompanied by a request for an order shortening time. The court shortened time, setting the motion for December 14, 2005, and ordering

1 that any opposition be filed by December 12, 2005. On December 9, 2005, Ming Sun, through his
2 attorney, filed an opposition to the motion. On December 12, 2005, the United States filed its
3 opposition. That same day, defendant Xiao Feng Shen filed a joinder in to the United State's
4 opposition. Then, material witnesses Jie Hua Huang, Pi Lien Chen, Chiu Lin Tsin, and Mei Ching
5 Chien filed joinders to the motion. Material witness Kyung Moon filed a separate motion (also for a
6 video deposition) with a hearing date of January 4, 2006. On December 13, 2005, only aware of a
7 single joinder to the motion - that of Jie Hua Huang - the court issued an order denying the joinder, at
8 the time believing that defendants had not had an adequate opportunity to respond to the purported
9 joinder. The court also continued Kyung Moon's motion until January 5, 2006. On December 14,
10 2005, witness Xio Lin Lin filed a joinder to the motion.

11 At the hearing on the motion, it became clear to the court that the hearing should be continued.
12 Counsel for defendants, some whom had not filed oppositions to the motion, objected to the fact that
13 their clients were not present for the hearing. Counsel represented that they had received some
14 discovery from the government, but had not had an adequate opportunity to review it. If forced to go
15 forward at this time with material witness depositions, defense counsel stated that they would not be
16 able to effectively represent their clients.

17 The government represented that it had not completed producing discovery to the defendants,
18 but anticipated completion by the first week in January. The government also stated that it may be
19 filing a superceding indictment against defendants sometime before February 1, 2006.

20 Counsel for the material witnesses argued that their clients should be released. The witnesses
21 are detained in "locked-down" halfway houses scattered around the Bay Area, with no income, no
22 ability to work, no access to healthcare, and no way to reclaim property they were forced to abandon
23 when they were first taken into custody. The witnesses represent that they will be available for further
24 deposition if they are released, and are willing to return to the United States to testify at trial, if
25 necessary.

26 Overall, the court does not have adequate factual information to reach a decision on whether
27 the material witnesses should be deposed and released at this time, and recognizes that defendants
28

1 need some additional time to prepare for any potential depositions. Accordingly, the court orders as
2 follows:

- 3 1) The hearing on Yu Ying Lin's and Kyung Moon's motions to have their depositions
4 taken is continued to February 1, 2006 at 10:00 a.m. At the same time, the court will
5 hear the requests of any other material witness that seeks an order for her deposition
6 to be taken as well.
- 7 2) The court will treat the "joinders" filed by material witnesses other than Yu Ying Lin
8 and Kyung Moon as equivalent to motions filed on behalf of the "joining" material
9 witnesses. Those who have already filed joinders need not file again. Those who have
10 not but want to shall file their joinders by January 18, 2006. All joinders shall include
11 a declaration explaining the specific circumstances of why and when that material
12 witness should have her deposition taken.
- 13 3) Any opposition to the relief sought by the material witnesses must be filed no later than
14 January 25, 2006.
- 15 4) Lead counsel for the government must appear at the February 1, 2006 hearing. The
16 government is expected to proceed expeditiously with discovery, and, as represented,
17 to have produced the balance of the discovery to defendants by January 9, 2006. The
18 court expects defendants to have digested that discovery by the time of the February
19 1st hearing.
- 20 5) The court has arranged that all counsel representing material witnesses have been
21 added to the court's e-filing system under the above-listed case number.
- 22 6) This court's order of December 13, 2005 is vacated.

23 **IT IS SO ORDERED.**

24 Dated: 12/16/05

/s/ Howard R. Lloyd
HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WILL BE SENT TO:

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* Counsel are responsible for providing copies of this order to co-counsel.

Dated: 12/16/05

/s/ RNR
Chambers of Magistrate Judge Lloyd